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evidence if such consideration is not an operative part of the contract. 4 Wigmore, Evidence (1904) § 2433; *Miller v. McKenzie* (1884) 95 N. Y. 575; *Wheeler v. Billings* (1868) 38 N. Y. 263. Inasmuch as the writing expressed no valid consideration, there was no question of varying the obligation of an existing contract. The rule applicable to the instant case is that parol evidence of consideration is admissible to show the inception of a contract. *Guidery v. Green* (1892) 95 Cal. 630, 30 Pac. 786. In negotiable instruments, although no consideration is expressed, the existence of consideration may always be proved *dehors*. *Board of Trustees v. Saunders* (1893) 84 Wis. 570, 54 N. W. 1094; *Packard v. Richardson* (1821) 17 Mass. 122. In the case of sealed instruments N. Y. Code Civ. Proc. § 840 provides that a seal is only presumptive evidence of consideration, and that evidence to disprove its existence is competent. Logically it follows that parol evidence is as well admissible to prove a consideration when the instrument failed to recite any. The result reached in the instant case is therefore correct.

FEDERAL COURTS—DIVERSITY OF CITIZENSHIP—PARTIES OF RECORD.—The plaintiff brought an action against a New York corporation in the federal court for the Southern District of New York while a decree of the New York state courts was still in force declaring the plaintiff insane. Subsequently to the New York decree, and prior to this action, the plaintiff was adjudged sane in the state of his domicile. The court, following the New York rule, refused to permit the plaintiff to sue in his own name. Upon his request to substitute as plaintiff his committee, a New York citizen, *Semble*, such substitution would have destroyed the diversity of citizenship. *Chaloner v. New York Evening Post Co.* (C. C. A. 1920) 265 Fed. 204.

The court in the instant case follows the well settled rule that diversity of citizenship depends upon the personal citizenship of the parties of record and not upon that of the parties of interest. *Simson v. Klipstein* (D. C. 1920) 262 Fed. 823. This rule is applied to executors and administrators, guardians, trustees, receivers, *etc.*, suing in their own names and irrespective of whether title is or is not in them. See *Memphis Street Ry. v. Bobo* (C. C. A. 1916) 232 Fed. 708; *Johnson v. City of St. Louis* (C. C. A. (1909) 172 Fed. 31. Thus in jurisdictions where a committee must sue in its own name the citizenship of the committee determines the jurisdiction of the court. *Cf. Mexican Central Ry. v. Eckman* (1903) 187 U. S. 429, 23 Sup. Ct. 211. And where the committee must sue in the name of the insane person the citizenship of the latter is controlling. *Stout v. Rigney* (C. C. A. 1901) 107 Fed. 545; *cf. Toledo Traction Co. v. Cameron* (C. C. A. 1905) 137 Fed. 48. Exceptions have been made in the case of public officers suing on behalf of foreign citizens when the officer is a mere "conduit" through whom the law affords a remedy. *McNutt v. Bland* (1844) 43 U. S. 9; *Browne v. Strode* (1809) 9 U. S. 303. Although these cases are inconsistent with the general rule, they are followed notwithstanding. It would be sounder policy to make the citizenship of the parties for whose benefit the action is brought controlling, especially in the case of guardians and committees, since it is obvious that the rights of the person represented are being enforced.

INSURANCE—CONDITION—CONSTRUCTION.—In an action on a policy of insurance against loss from burglary, issued by the defendants to the

plaintiffs, the defense was predicated upon a stipulation in the instrument that "This policy shall be void if the conditions or circumstances of the risk are changed without the written consent of the company." Iron shutters, attached to the windows of the premises when the policy was issued, were subsequently removed by the plaintiffs' landlord pursuant to directions from the fire department. Of this the defendants had no knowledge before the loss. They contended that, by virtue of the above clause, the policy became *ipso facto* void the moment the shutters were removed. *Held*, two judges dissenting, for the plaintiffs. *Zivitz v. Maryland Casualty Co.* (1st Dept. 1920) 192 App. Div. 83, 182 N. Y. Supp. 321.

It is the general attitude of the courts that insurance policies are to be construed liberally toward the insured, and strictly against the insurer, and that ambiguities will be resolved in favor of the insured. *Poskersz v. Philadelphia Casualty Co.* (1914) 213 N. Y. 22, 106 N. E. 749. This attitude appears to be the result of (1) a feeling that, in general, language should be construed against the user; (2) a desire to see the purpose of the insurance contract effectuated, *i. e.*, indemnity. But courts should not make new contracts for the parties so that where there is but one sense in which the terms can reasonably be taken, the policy should be interpreted accordingly. *Imperial Fire Ins. Co. v. Coos County* (1894) 151 U. S. 452, 14 Sup. Ct. 379; *Hatch v. United States Casualty Co.* (1908) 197 Mass. 101, 83 N. E. 398; *Rosenthal v. American Bonding Co.* (1912) 207 N. Y. 162, 100 N. E. 716. Nevertheless, courts, eager to prevent forfeitures, follow a rule of reasonable rather than liberal interpretation. *Liverpool Ins. Co. v. Kearney* (1901) 180 U. S. 132, 21 Sup. Ct. 326. Consequently, the border line is shadowy between cases where recoveries are allowed, under the extended application of this rule, and cases where recoveries are denied on the theory that courts will not make new contracts. In the instant case, a literal interpretation of the clause in question would avoid the policy. Going behind the language the most reasonable interpretation, it is submitted, is that the insurers intended (1) to prevent increase of risk; (2) in the event of an increase without their consent, to avoid the policy because the new risk would fairly demand a higher rate. The court seems not to have considered the intent or motive of the insurers in becoming obligated, and the court appears to have carried out the principle of interpretation in favor of the insured to an unnecessary extent.

INTOXICATING LIQUORS—PROHIBITION—TRANSFER OF TITLE.—A pharmacist was convicted of making an unlawful sale of intoxicating liquor. A statute provided that "It shall be unlawful" for a pharmacist so convicted "to sell within two years thereafter alcohol for any purpose whatsoever". Wash., Laws 1917, c. 19. Three days after this conviction the pharmacist sold his entire stock, including a quantity of intoxicating liquor. *Held*, the sale was valid and passed property in the liquor. *State v. Northern Pacific Ry., State v. Baisch* (Wash. 1920) 188 Pac. 3.

Where a statute merely regulates the traffic in liquor, it is not applicable to those transactions in which the passing of property in the liquor is merely an incidental though concomitant result of the consummation of the deal. *Ketler v. Murrey* (1906) 89 Wash. 579, 154 Pac. 1084; *Hagerty v. Tuxbury* (1902) 181 Mass. 126, 63 N. E. 333. Nor if it be merely incidental to the performance of a legal duty.